REMARKS

After entry of this amendment, claims 1-12 are pending. Claims 5 and 6 have been amended without prejudice or disclaimer and find support *inter alia* in the original claims. Further support for the amendments made to claims 5 and 6 is found in the specification at page 18, line 42 through page 19, line 2. No new matter has been added.

In response to the restriction requirement set forth in the Office Action mailed May 4, 2007, Applicants provisionally elect Group I, claims 1-4, 7-8 and 11-12 with traverse. Reconsideration and withdrawal of the restriction requirement is strongly urged for the following reasons.

The Claimed Inventions Share a Special Technical Feature

Because this application is a national stage filing pursuant to 35 U.S.C. § 371, unity of invention under PCT Rule 13.1 and 13.2 is the applicable standard. Unity of invention is fulfilled "when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical feature. The expression "special technical feature" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." (PCT Rule 13.2).

The Examiner argues that the inventions do not relate to a "special technical feature" which defines a contribution over the prior art, citing Grimsley et al. (U.S. Patent No. 5,569,597; hereinafter "Grimsley"). Applicants respectfully disagree that the invention of the present application does not make a contribution over the reference cited by the Examiner.

As stated in the specification and repeated in the claims, the general inventive concept of the present application relates to a genotype-independent, efficient method of generating a fertile, transgenic Gramineae plants using an isolated zygotes which is substantially free from its naturally surrounding tissue. See Specification, for example, at page 4, line 36 through page 5, line 4. The Examiner characterizes Grimsley as disclosing a method of Agrobacterium-mediated transformation of Gramineae using isolated zygotes referring to claims 1, 21, and 37 of

Grimsley. See Official Action at page 3. Applicants disagree that Grimsley teaches the use of isolated zygotes as recited in the claims. Grimsley does not disclose the method of the present invention which comprises the step of "isolating a zygote from a Gramineae plant to be transformed in a way that said isolated zygote becomes substantially free from its naturally surrounding tissue." Additionally, Grimsley does not disclose the regeneration or identification of fertile, transgenic Gramineae plants whose genome have been altered through the stable introduction of said genetic component as required by the claims. Therefore, Grimsley does not disclose the method of the invention as claimed. The Patent Office has not established the presence in the prior art of Applicants' invention as claimed.

Furthermore, claims 2-12 depend from claim 1 and thus contain all the limitations of claim 1. Claims 4 to 6 further define the regeneration step of claim 1 and claims 9 and 10 further limit the method of claim 1. All the claims therefore share a common special technical feature, *i.e.* the method as recited in claim 1.

Accordingly, Applicants respectfully request that the Examiner reconsider the restriction requirement and examine all the claims in one application.

Unity Of Invention Must Be Considered First Only In Relation To Independent Claims

As mentioned above and as explained in Chapter 10 of the PCT International Search and Preliminary Examination Guidelines, PCT Rules 13.1 and 13.2 are the applicable standard for determining unity of invention during the national stage of an international application under 35 U.S.C. § 371. See also MPEP § 1850. According to Chapter 10 §10.06 of these Guidelines, unity of invention must be "considered in the first place only in relation to the independent claims" and not the dependent claims. Furthermore, Chapter 10 §10.07 of the Guidelines states that "[i]f the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect to any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention."

There is only one independent claim in the present application, *i.e.* claim 1. The Examiner has alleged lack of unity based on features recited in the dependent claims. A finding of lack of unity is improper when based on dependent claims, regardless of whether or not the dependent claims contain a further invention. Furthermore, as mentioned above, the Patent Office has not established the presence in the prior art of Applicants' invention as claimed. Applicants respectfully request that this restriction requirement be withdrawn.

Additionally, Applicants believe that there is no undue burden on the Examiner to search this invention and examine all the claims in one application.

CONCLUSION

For at least these reasons, Applicants respectfully request that the requirement for restriction be reconsidered and removed entirely.

In the alternative, in light of the present amendments, Applicants respectfully request that at least Groups I-III be examined in one application. Amended claims 5-6 (Groups II- III) should be included in Group I as they further define the feeder system of claim 4 of Group I.

Accompanying this response is a petition for a one-month extension of time to and including July 5, 2007 pursuant to 37 CFR § 1.7(a), with the required fee authorization. No further fee is believed due. However, if any additional fee is due, the Director is hereby authorized to charge our Deposit Account No. 03-2775, under Order No. 13173-00023-US from which the undersigned is authorized to draw.

Respectfully submitted,

By 

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